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Chairman: Mr. Enkhsaikhan ..... (Mongolia)

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The meeting was called to order at 10.15 a.m.

Agenda item 153: Establishment of an International Criminal Court (*continued*) (A/53/189 and 387)

1. **Mr. Türk** (Slovenia) said that the successful completion of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court was a historic step towards making the rule of law and the protection of human rights truly universal. The adoption of the Statute of the International Criminal Court meant that substantive norms and institutional enforcement would now be part of an objective, coherent, non-political and genuinely international system.

2. Many of the participants in the Rome Conference had had specific expectations with regard to the Statute, which, as a text embodying the widest possible agreement, could not meet them all. His Government's expectations had been disappointed with regard to two issues in particular. First, it was regrettable that the "Korean proposal" for article 12 had not been included in the final package. The current preconditions limited the Court's ability to exercise its jurisdiction, as it was to be expected that, frequently, neither the territorial State nor the State of nationality of the accused would be a party to the Statute. Secondly, his delegation regretted that it had not been possible to include attacks on United Nations-declared safe areas in the list of war crimes in article 8. In a spirit of compromise, Slovenia had withdrawn its proposal at the Conference, on the understanding that such attacks were largely covered by the crime of intentionally directing attacks against the civilian population.

3. Those objections notwithstanding, his Government was convinced that the Rome Statute represented a sound basis for the functioning of the future Court, which could make a real and lasting difference. His delegation was confident that it would be possible to build upon the Statute in the future on the basis of the actual working experience of the Court. In that context, Slovenia welcomed the inclusion within the Court's jurisdiction of crimes committed during both international and domestic armed conflicts. It was to be hoped that article 124 would rarely be applied by States, and that it would be of a transitional nature, not a permanent opt-out provision.

4. With regard to the technical error that had crept into article 121, paragraph 5, of the 17 July 1998 version of the Statute, it was his delegation's understanding that it had been due to the extremely short period of time available for the preparation of the final text. The error could not, therefore, be viewed in any way as grounds for reopening the Statute. The correction should be made in accordance with the provisions of article 79 of the Vienna Convention on the Law of Treaties of 1969.

5. His delegation was well aware that work on the establishment of the Court remained to be completed. Priority must be given to finalizing the draft texts of the Rules of Procedure and Evidence and of the Elements of Crimes before 30 June 2000. His Government strongly supported the early convening of the Preparatory Commission for a duration of at least eight weeks during 1999, and was prepared to do its utmost to contribute to the accomplishment of the tasks entrusted to the Commission.

6. His delegation welcomed the inclusion of the crime of aggression within the Court's jurisdiction and hoped that through further negotiations it would be possible to arrive at an acceptable and realistic definition of that crime.

7. Slovenia looked forward to the speedy entry into force of the Statute, which would enable the coming into operation of the Court without delay. The high number of signatories to the Statute recorded so far was encouraging. It was to be hoped that many more countries would sign at the earliest possible date and initiate the domestic formalities required for ratification. In that connection, his Government had signed the Statute on 7 October in Rome.

8. **Mr. Skotnikov** (Russian Federation) said that his delegation had consistently supported the establishment of an efficient and permanent international criminal-justice organ that could complement the existing system for the maintenance of international peace and security. On the whole, the Rome Conference had met that challenge successfully. The Statute of the International Criminal Court was a well-balanced compromise that would enable the Court to make a sizeable contribution to the fulfilment of the purposes and principles of the Charter of the Untied Nations.

9. First, the Court was clearly integrated into the existing system for the maintenance of international peace and security through the key role played by the Security Council. The Council could trigger the exercise of the Court's jurisdiction or suspend it if the fulfilment of its mandate under the Charter so required. The relationship of the Council to the Court, as stipulated by the Statute, was based not on subordination, but on cooperation in the best interests of the international community. The Court's independence would not be affected by the support of the Security Council, while its efficiency would be enhanced.

10. Second, the Court was intended not to substitute for national judicial authorities, but to complement them in

cases where they became ineffective or ceased to exist. Thus, the principle of complementarity, as set forth in the Statute, was of the utmost importance. The Court was, first and foremost, the guarantor of the proper administration of justice by national judicial organs with respect to the most serious international crimes. At the same time, it served as a warning to potential criminals.

11. Third, the Statute set forth democratic principles of criminal justice ensuring due process for the accused. It spelt out the responsibilities and powers of the Prosecutor with regard to the institution of proceedings and the role and functions of the Pre-Trial Chamber. Together with the admissibility criteria specified in the Statute, those provisions constituted stable guarantees against attempts to manipulate the Court for political purposes.

12. Fourth, the Statute contained clear definitions of the crimes within the jurisdiction of the Court. Those definitions established high thresholds which would prevent isolated instances of crimes from being referred to the Court. It was clear that the Court should exercise jurisdiction in relation to large-scale, systematic crimes perpetrated in fulfilment of the policy of a State or an organization.

13. As to the definition of the crime of aggression, his delegation assumed that it would be linked directly to the exclusive prerogative of the Security Council to characterize the actions of a State as an act of aggression as a prerequisite for the institution of proceedings against an individual.

14. Fifth, the Statute contained adequate guarantees of the protection of information affecting the national security interests of a State when such information was requested by the Court.

15. Sixth, the procedures governing the composition of the court and its administration made it possible to assume that the Court would function efficiently and impartially.

16. Seventh, the Court would be financed by States parties to the Statute. It would be financed from the United Nations regular budget only in cases where the Security Council referred cases to the Court. Such a financing arrangement was a guarantee of the Court's independence.

17. Eighth, the Statute provided for the establishment of an Assembly of States Parties, which was also an important prerequisite for ensuring that the Court was integrated into the efforts to maintain international peace and security.

18. While those and other provisions of the Statute had made his delegation's support possible, it was regrettable that several reasonable proposals had not been included in the Statute, and that such an extraordinarily important document had had to be adopted by means of a vote. In drafting the auxiliary documents, the Preparatory Commission should strive not only to preserve the balance of interests achieved at the Conference, but also to address the concerns of those States which had not supported the adoption of the Statute. In his delegation's view, it was essential to achieve universal recognition of the future Court. His delegation would participate actively in the work of the Preparatory Commission.

19. **Ms. Taddei** (San Marino) said that the establishment of the International Criminal Court embodied a fundamental principle of law, which was that the judge should be appointed before the perpetration of a crime. The ad hoc criminal tribunals had all been established only after the crimes over which they had jurisdiction had been committed, and therefore, they could not exercise a preventive function. While the adoption of the Statute had required compromises on the part of some countries, it represented the first step towards the creation of an effective and credible court that could combat impunity with respect to the most heinous crimes. Her delegation welcomed the establishment of a Preparatory Commission with the mandate to take all the measures required to enable the Court to begin functioning promptly and effectively.

20. The necessary means to achieve that goal was the entry into force of the Statute. Her country had been among the first signatories to the Statute and its legal experts were studying the text with a view to its ratification. So far, 58 States had signed the Statute. Her delegation called upon States that had not yet done so to consider signing and ratifying the Statute and to make reasonable efforts to overcome any obstacles, whether of a technical, political or other nature, which currently prevented them from signing and ratifying it.

21. Her delegation drew attention to resolution E of the Rome Conference, which recognized that terrorist acts and drug trafficking were serious crimes of concern to the international community, sometimes destabilizing the political and social and economic order in States. At the Conference, States had not been able to agree on a generally acceptable definition of those crimes. Nevertheless, the Statute provided for a Review Conference, which allowed for an expansion of the jurisdiction of the Court. Her delegation associated itself with the recommendation of the Conference that a Review Conference should be established to consider those crimes.

22. **Mr. Gőrőg** (Hungary) said that his delegation fully subscribed to the statement made on the item by the representative of Austria on behalf of the European Union.

23. History demonstrated clearly that there could be no peace without justice. His Government was therefore of the view that all those who committed war crimes and crimes against humanity must be held personally responsible and accountable. As a country belonging to a region in which grave violations of international humanitarian law had been committed in recent years, Hungary had welcomed the decision of the Security Council, acting under Chapter VII of the Charter of the United Nations, to set up ad hoc tribunals for the prosecution of crimes committed in the territory of the former Yugoslavia and in Rwanda. The International Criminal Court would have several advantages over the ad hoc tribunals: it would guarantee equal treatment for all violations, by whomever and wherever perpetrated; it would exercise its jurisdiction without undue delay; it would make use of the special expertise of its permanent staff; and it would eliminate the need for a decision of the Security Council in order to establish an ad hoc tribunal.

24. His delegation wished to draw attention to those elements of the Statute of the Court to which it attached the greatest importance: (a) the Court had inherent jurisdiction over the core crimes of genocide, war crimes and crimes against humanity, whether committed in peacetime or during an armed conflict; (b) the Prosecutor was empowered to initiate investigations *proprio motu* in connection with crimes under the jurisdiction of the Court, subject only to review by the Court itself; (c) official capacity, such as being a head of State or Government, would not exempt perpetrators from criminal responsibility and did not constitute grounds for reduction of sentence; (d) the Statute excluded statutory limitations for the crimes under its jurisdiction, thus reconfirming a principle laid down in General Assembly resolutions since the 1960s and universally upheld by national legislation; (e) States parties were under an obligation to comply with requests from the Court for assistance and cooperation; and (f) reservations were not permitted, since they could easily defeat the purpose of the Statute.

25. His delegation, which had been a member of the "like-minded" group and had voted in favour of the Statute at the Conference, hoped that the 60 ratifications needed for its entry into force would be reached as soon as possible. His Government had taken the necessary steps to sign and ratify the Statue in the near future.

26. Hungary continued to cooperate actively with other members of the Preparatory Commission, whose major task was to finalize the draft texts of the Rules of Procedure and Evidence and of the Elements of Crimes, as well as the documents necessary for the functioning of the Court. It was important that all States which had signed the Final Act in Rome, and those which had been invited to participate, should take part in the work of the Preparatory Commission. It was to be hoped that the opportunity would arise in the course of that work to accommodate some of the concerns raised by a number of States during the Conference, thus facilitating the emergence of an even broader consensus. Only the expeditious accomplishment of the tasks of the Preparatory Commission would enable the Court to begin functioning in the foreseeable future. For that reason, the Preparatory Commission should be provided with all the resources and services required for the efficient performance of its duties.

27. **Mr. Chandumajra** (India) said that his delegation had participated actively in the process leading to the establishment of the International Criminal Court. India had hoped for the creation of a universally acceptable, independent and efficient institution that could deal not only with traditional crimes, such as war crimes and genocide, but also with international terrorism and drug trafficking. Regrettably, those hopes had been disappointed on several accounts.

28. In the first place, the Statute had failed to include international terrorism in the crimes covered; failed to provide flexibility in the nature of the Court's jurisdiction; blurred the distinction between customary law and treaty obligations in the definitions of internal conflicts and crimes against humanity; and failed to respect the principle of consent of States, the principle of territoriality in the exercise of criminal jurisdiction and the priority of national criminal jurisdiction over international jurisdiction. What was worse, the Statute had legitimized the over-stretched interpretation of the powers of the Security Council by subordinating the future Court to the discretion of the five permanent members of the Council. It was ironic that the Statute treated offences such as murder as an international crime, but failed to include the first use of nuclear weapons, which would result in the annihilation of a major part of humanity. It was uncertain, therefore, whether an international criminal court founded on such a statute had any prospects of becoming universal.

29. In accordance with resolution F adopted by the Rome Conference, the Preparatory Commission for the International Criminal Court was to prepare proposals on various administrative and financial matters. It was also to prepare, by 30 June 2000, the draft texts of the Rules of Procedure and Evidence and of the Elements of Crime. Furthermore, the Preparatory Commission was to prepare proposals for submission to the Review Conference on the definition and Elements of Crimes of aggression and the

conditions under which the Court could exercise its jurisdiction with regard to that crime.

30. International terrorism was the most reprehensible type of international crime, threatening the political integrity and the social fabric of States and taking the lives of innocent civilians. The Preparatory Commission should, as a priority, prepare proposals for a provision on terrorism, including the definition and Elements of Crimes of terrorism. The Commission should submit those proposals to the Review Conference with a view to arriving at an acceptable provision for inclusion in the Statute.

31. Lastly, it was to be hoped that the Preparatory Commission would take into account the views of all States and that requests from States which represented the majority of the world's population would not be brushed aside because they were not politically convenient to those described as the "like-minded".

32. **Mr. Calovski** (The Former Yugoslav Republic of Macedonia) said that his Government had signed the Final Act of the Rome Conference. It had also signed the Statute and would ratify it in due course.

33. The successful conclusion of the Rome Conference represented a major development in the promotion of international law. Several times in the twentieth century, the Macedonian nation had been the victim of genocide, war crimes and crimes against humanity; it was therefore natural that his Government had consistently supported the establishment of an international criminal court.

34. The task of implementing resolution F of the Rome Conference lay ahead. It was to be hoped that the Preparatory Commission would accomplish its tasks in a timely manner. The most important task, however, was the promotion of the Statute, so that the Court could begin functioning at the beginning of the next century.

35. His delegation believed that it was very important not to change the Statute of the Court as adopted. While the view that the Statute should not have neglected to mention landmines and weapons of mass destruction, particularly nuclear weapons, drug trafficking, and so on, was credible, it was a source of satisfaction that the Court's jurisdiction covered such crimes as denial of humanitarian assistance, forced displacement, attacks on humanitarian personnel, and so on. It was true that the Statute was not a perfect document; nonetheless, it was regrettable that some major countries had not been able to join the consensus in Rome. His delegation hoped that they would be able to do so at a later stage.

36. Future activities to promote the Statute should clarify the following aspects: (a) the relationship between the United Nations and the Court; (b) the relationship of non-party States to the Court, and the principles of universality in the existing instrument; and (c) crimes falling under the Statute.

37. In September he attended the twenty-third Round Table on Current Problems in International Humanitarian Law in San Remo, Italy. The meeting had been devoted to an analysis of the Rome Statute of the International Criminal Court, and had concluded that the Statute, although not perfect, was the best that could be expected under the prevailing international circumstances. The conclusions of the round table would surely be of interest to Committee members, and he would be happy to give them to the Secretariat for distribution as an informal document.

38. In conclusion, he said he wished to stress the importance of the preventive effect that the Court would have, and to urge States to sign and ratify the Statute at an early date.

39. **Ms. Simone** (Armenia) said that her delegation welcomed the adoption of the Statute of the International Criminal Court. Producing a final document had been no small feat. Inclusion of the crime of aggression with no definition was one of the compromises that had had to be made. While her country had supported including aggression, it had done so with the understanding that a clear definition would be drafted. It was problematic to have included the crime without any definition, even with the proviso that the Court would only be able to exercise jurisdiction after a definition was approved by the Assembly of States Parties.

40. Her country had also supported the inclusion of the crime of terrorism, but had felt that it would be appropriate to leave that crime for consideration at a later review conference, rather than include it in the Statute without a clear definition acceptable to a majority of delegations. That might also have been the better approach for the crime of aggression.

41. Armenia was satisfied with the final compromise reached on the provision governing the Prosecutor. The checks and balances built into the system should meet the concerns of all Member States, while preserving the independence of the Prosecutor. Her Government would have preferred to see a more restrictive time limit on the Security Council's deferral right, but could accept the compromise made.

42. Her delegation regretted that the substantial compromises made with respect to the jurisdiction of the Court were still not acceptable to a small number of States. The issue should be reopened for further negotiation, in an effort to further narrow the jurisdiction provision.

43. Despite the compromises made, a viable statute had been negotiated. In order for the Court to accomplish its intended purpose, several steps still needed to be taken. A number of provisions would need to be drafted by the Preparatory Commission, including the Rules of Procedure and Evidence, the Elements of Crimes, a relationship agreement between the Court and the United Nations, and a number of other practical arrangements for the functioning of the Court. Sufficient time and resources would have to be allocated to the Preparatory Commission to allow it to accomplish its mandated goals.

44. The Statute would need to be ratified by 60 States before it came into force. Many parliaments would have to be convinced that ratifying it would not infringe on national sovereignty. Under the principle of complementarity, national courts could be assured that the Court would only intervene if and when States were unwilling or unable to prosecute and punish those responsible for crimes under the Statute.

45. Seen in its proper context, the adoption of the Statute was a remarkable achievement in the advancement of human rights. It would fill the current void in international law and eliminate the need for independent ad hoc tribunals.

46. **Mr. Machochoko** (Lesotho) said that his delegation fully associated itself with the statement made by the representative of South Africa on behalf of the Southern African Development Community.

47. Stressing the historic significance of the adoption of the Rome Statute, he said that the positive aspects of the Statute far outweighed its negative elements. Notable compromises included those reached with regard to crimes covered by the Court, the principle of complementarity, the court's jurisdiction, the independence of the Prosecutor and the prohibition of reservations.

48. By defining criminal conduct that violated certain basic norms established by the international community, the Statute had paved the way for prosecuting those who committed the most serious crimes of international concern. His delegation urged States to sign and ratify the Statute in order to ensure that the Court would begin its operations as soon as possible. His delegation welcomed all initiatives to encourage an accelerated ratification process, and hailed all efforts to promote awareness of the results of the Rome Conference and of the content of the Rome Statute. It also commended the non-governmental organizations that had tirelessly fought for a fair, independent and effective court.

49. The Preparatory Commission envisaged in the Final Act of the Rome Conference (A/CONF.183/10) should be set up as soon as possible and should be provided with the resources and services required to enable it to perform its functions efficiently and expeditiously. A maximum of eight weeks should be allocated for the Commission to finalize its work.

50. If the Court was to be truly universal, it was essential that all voices should continue to be heard. The trust fund created during the process leading up to and including the Rome Conference had gone a long way towards ensuring the participation of least developed countries in the preparatory work and at the Conference. His delegation supported the call for the continuation of the fund and urged States to make voluntary contributions to it. Non-governmental organizations should also participate in the Commission's work on the terms that had already enhanced their cooperative partnership with the United Nations.

51. **Mr. Norström** (Sweden) said that his delegation fully supported the statement made earlier by Austria on behalf of the European Union.

52. The adoption of the Statute was an outstanding achievement. Like every negotiated product, it represented a compromise, but his country wholeheartedly supported it since it represented the best package that could possibly be obtained under the circumstances. His delegation hoped that those who might have had misgivings would come to the same conclusion.

53. It was important to look forward now: there was work to be done on two fronts. First of all, every effort must be made to ensure the earliest possible entry into force of the Statute. Sweden had already signed the Statute, and his Government had begun preparing a bill for submission to Parliament concerning ratification and the enactment of the necessary legislation with a view to acceding to the Statute by the end of the year 2000. Secondly, it was essential to push forward with the process of negotiating the necessary secondary instruments, including the Rules of Procedure and Evidence, so that the timetable set by the Rome Conference could be adhered to and the draft instruments would be ready for adoption by the Assembly of States Parties as soon as the Statute entered into force. His delegation urged the Sixth Committee to adopt a resolution mandating the establishment of the Preparatory Commission envisaged in the Final Act of the Rome Conference, and giving the Commission the

necessary meeting time and resources in 1999 and, if necessary, in the first half of 2000.

54. His delegation attached great importance to participation in the continuing negotiations by all those who had been invited to participate in the Rome Conference.

55. **Mr. Kirsch** (Canada) said that his country strongly supported the framework for the International Criminal Court which had emerged in Rome, since it would enable the Court to carry out its crucial mandate. Undoubtedly, the Statute was an outstanding example of what the international community could achieve when the necessary political will existed. All delegations, large and small, had made significant contributions to the elaboration of the Statute, including those which ultimately had not been able to join the majority in approving the text.

56. Two of the complex issues that had been dealt with merited particular mention: jurisdiction and complementarity. The solution found in the case of jurisdiction, based on the territorial State or the State of nationality of the accused, was completely in keeping with international law and practice. In particular, it followed not only the approach adopted in many national criminal jurisdictions, but also the approach taken in other international legal instruments, such as a number of conventions aimed at preventing and punishing terrorist acts and various treaties in other areas. In the past few years, several instruments employing that approach had been adopted by the General Assembly.

57. The codification of the principle of complementarity was also one of the Statute's fundamental strengths. The Rome Statute represented a delicate balance, weighted heavily towards the right and responsibility of States to investigate and prosecute, but allowing the Court to assume jurisdiction in special cases to ensure that justice was served. The checks and balances that had been included would permit the Court to exercise jurisdiction only in well-defined circumstances.

58. His country was aware that a few States remained hesitant about the Court. It was to be hoped that their concerns would be allayed once the Court began its operations. Legitimate concerns should be addressed, in order to ensure that the institution to be created would be both credible and responsible. In striving for solutions, it was also important not to undermine the integrity of the Court or dilute its effectiveness. The Court was not a threat to any State that was committed to the well-being of individuals; rather, it would serve the objectives of such States by contributing to long-term international stability.

59. Much work remained to be done, including the drafting of the Rules of Procedure and Evidence, the Elements of Crimes, the definition and elements of the crime of aggression and instruments to facilitate the establishment of the Court in The Hague. To achieve those objectives, the General Assembly should adopt a resolution establishing a Preparatory Commission with a clear and unequivocal mandate and adequate support to enable it to complete its tasks. The resolution should be framed in a manner that would allow for the discussion of any issues that were of concern to States, so as to build universal support for the Court.

60. In conclusion, he informed the Committee that Canada was taking the necessary steps to sign the Statute in the near future.

61. **Ms. Betancourt** (Venezuela) said that the establishment of the International Criminal Court demonstrated the willingness of the international community to ensure that the most serious crimes of international concern would be investigated and that the perpetrators of such crimes would be punished.

62. Her country had played an active role in the work leading up to the Rome Conference, and had supported the establishment of an independent, efficient and complementary Court. The Statute was not perfect, but it did reflect the diversity of positions expressed and the contributions made by the participating delegations.

63. Much remained to be done, as the Preparatory Commission would need to draw up the Rules of Procedure and Evidence, the Elements of Crimes, the financial regulations and rules for the Assembly of States Parties. The support of the international community was of fundamental importance and could only be made effective by the signing and ratification of the Statute and the prompt convening of the Preparatory Commission.

64. Her country had signed the Statute in Rome on 14 October 1998 and was looking forward to participating in the work of the Preparatory Commission. It understood but did not share the concerns expressed by some delegations regarding the future work of the Court.

65. **Mr. Galuška** (Czech Republic) said that, given the impossibility of reflecting the specific expectations of each country, the Rome Statute was a compromise between the different positions expressed. Nevertheless, it was a balanced document that served as a good foundation for a strong, independent and effective Court.

66. His delegation welcomed the provision for the inherent jurisdiction of the Court over crimes under international law;

the provision for its jurisdiction over the crime of aggression was an important achievement, even though the crime was yet to be defined, since to exclude it would cast doubt on the existing principles of customary international law. The principle whereby a State party to the Statute automatically accepted the jurisdiction of the Court was a wise solution to the difficult issue of the trigger mechanism. Unfortunately, however, that principle was weakened by the transitional provision that enabled a ratifying State to refuse, for a period of seven years, the jurisdiction of the Court over war crimes committed by its nationals or in its territory. Conversely, his delegation welcomed the power accorded to the Prosecutor to act *proprio motu* as an important factor in building a responsive and flexible Court.

67. The Preparatory Commission must be established as soon as possible. His country had taken the necessary steps for the signature of the Statute by analysing its potential impact on domestic legislation. The Czech Republic had thus ensured that it was in a position to honour its obligations under the Statute and make any essential adjustments.

68. **Mr. Paulauskas** (Lithuania) said that his delegation aligned itself with the statement made by the representative of Austria on behalf of the European Union. His country took great pride in the knowledge that the international community had provided for the establishment of an institution that would improve international relations on the basis of an effective method of ensuring international justice, supplement the national judicial systems already in place and serve as a catalyst for their continued change and development.

69. Welcoming the inclusion of the crime of aggression in the Statute, he commended the German delegation for its instrumental role in the negotiations on the subject. He said that Lithuania believed that the existing disagreement over a definition of that crime would be overcome through the substantial political and legal input of delegations to the work of the Preparatory Commission. It fully agreed with the European Union that the Preparatory Commission should have sufficient resources to enable it to perform its assigned tasks.

70. Lithuania would sign the Statute before the end of the current year and urged those States which had not yet signed and ratified it to do so.

71. **Mr. Kanju** (Pakistan) said that his country fully supported the establishment of a strong and effective international criminal court. Nonetheless, it had concerns about some provisions of the Statute. For instance, it believed that the Court should exercise its jurisdiction to bring perpetrators of heinous crimes to justice in cases where, owing to a complete breakdown of authority, a State lacked an effective legal mechanism to enable it to perform its duty in that regard. That principle of complementarity constituted the basic edifice for the Court's exercise of jurisdiction; the Court should complement, and not supplant, the national legal system, failing which it would impinge on the sovereignty of the State. However, some provisions of the Statue, such as the provision concerning the *proprio motu* role of the Prosecutor, tended to dilute that same principle. Similarly, the role assigned to the Security Council in activating the trigger mechanism should be the exclusive realm of States parties, as Security Council decisions were based on political considerations and not on legal principles. His country therefore opposed any Security Council role in relation to the Court, as it would not be conducive to the development of a non-discriminatory and non-selective uniform system.

72. The provisions in the Statute that tended to challenge a State's legal process were also incompatible with the principle of complementarity in that they negated the principle of the sovereignty and integrity of States. Furthermore, armed conflicts not of an international character fell entirely within the domestic jurisdiction of the State concerned, in which case the Statute's provisions in that connection violated both the principle of the sovereignty of States and the principle of complementarity. His country would have equally serious difficulties concerning application of the provision on provisional arrest, which was not an option under Pakistan law. Lastly, Pakistan believed that it was essential to permit reservations to the Statute with a view to ensuring that States were not initially deterred from becoming parties to it and that States which were already parties did not later withdraw. However, it had voted in favour of adoption of the Rome Statute since it was confident that the Preparatory Commission would make every effort to alleviate the serious concerns which it articulated. Clear and unambiguous rules on Court practice might help States to secure their positions on critical issues and encourage them to become parties to the Statute.

73. **Mr. Baker** (Israel) said that the concept of an international criminal court had particular significance for his country and the Jewish people in view of their history. Israel had therefore been involved in the activities relating to the establishment of such a court ever since the early 1950s. Throughout that process, however, it had repeatedly voiced concern over several drafting developments which it regarded as potentially prejudicial to the impartial nature and character of such a court. For instance, some of the war crimes listed in the Statute had been selectively formulated and either lacked substantive elements of the instruments of

international humanitarian law from which they originated or contained elements which had not originally been part of those instruments. Furthermore, various formulations had been deliberately drafted to meet the agenda of certain States, which defeated the principle on which the instrument was based and created potential obstacles to its universal espousal.

74. His country had been consistently hesitant over the extremely wide *proprio motu* capacities granted to the Prosecutor, which could be abused and thus hinder the Court's functioning, and it had also expressed concern over a State's right to withhold from the Court information or documents that could prejudice its national security interests. It was equally concerned by the system for selecting judges on the Court on the basis, *inter alia*, of the principle of equitable geographical representation, which, given the current United Nations regional grouping system, provided little hope for the election of any Israeli candidate.

75. Israel, which had signed the Final Act of the Conference, would participate in the forthcoming deliberations of the Preparatory Commission. It trusted that those deliberations would remedy the hasty drafting process, providing depth and perspective and ensuring acceptability, and pay due regard to the views of all States, including those which had not voted in favour of the Statute.

76. **Ms. Wensley** (Australia) said that her delegation fully associated itself with the statement made at the 9th meeting of the Sixth Committee by the Samoan representative on behalf of the members of the South Pacific Forum that were represented at the United Nations, including Australia. It wished, nonetheless, to make a separate statement on the item under consideration.

77. The adoption of the Rome Statute represented a significant and substantive step towards the realization of a long-standing goal that had hitherto been unattainable, namely that of setting up a court to deter potential perpetrators of the most heinous crimes against humanity by ensuring that they could not act with impunity. It was now crucial to sustain the momentum thus established and embark upon the next phase of work with the same spirit of cooperation and energy which had produced the successful outcome in Rome.

78. It should be recognized that the Statute represented a balanced document which took account of the broad range of positions and concerns to be accommodated without departing from the original principles that had motivated the international community into pursuing the establishment of the Court. The Statute also did justice to the guiding principles of an independent, balanced and fair court that warranted wide international support. The means through which the Statute endeavoured to reflected a balance in the role of the Court were evident in its strong complementarity provisions, the provision of a strong role for the Security Council and the provision of a *proprio motu* role for the Prosecutor, coupled with the appropriate safeguards.

79. It was now essential to move expeditiously to the next phase of addressing the practical arrangements for the establishment and coming into operation of the Court. Given the crucial role of the Preparatory Commission in that process, it was vital to ensure that it had adequate meeting time and resources to fulfil its assigned mandate and meet its deadline, to which end she joined the calls for it to commence work in early 1999. Her country was ready to cooperate in concluding the substantial work on the Rules of Procedure and Evidence already undertaken in the Preparatory Committee. The General Assembly resolution on the establishment of the Court to be adopted at the current session should clearly set forth the Commission's mandate and forthcoming programme of work, as well as allocate sufficient meetings and resources for its task. Her Government remained fully committed to the Commission's fulfilment of its mandate as a matter of priority.

80. **Mr. Zackheos** (Cyprus) expressed his delegation's satisfaction with the outcome of the Diplomatic Conference, believing as it did that universal respect for humanitarian values was a prerequisite for the prevalence of justice. The genocides that had marked the century showed the necessity for effective permanent international machinery to bring to an end the culture of impunity.

81. It was perplexing that the crime of aggression had not, as the overwhelming majority of States clearly wished, been included among the crimes under the immediate jurisdiction of the Court. His delegation hoped that the Preparatory Commission would produce a definition of aggression and work out the conditions under which the Court would exercise its jurisdiction with regard to aggression. His delegation also attached great importance to the inclusion of the crime described in article 8.2 (b) (viii), namely population transfers by an Occupying Power. Moreover, the establishment of settlers in an occupied territory and the unlawful deportation of the population with a view to changing the territory's demographic composition were crimes that were covered by the provisions of articles 7.1 (d) and 8.2 (a) (vii), as well as 8.2 (b) (viii). Equally important were the provisions of article 8.2 (b) (ix) concerning attacks intentionally directed against places of worship, hospitals and other buildings dedicated to special purposes. As a victim of aggression itself, Cyprus could not but denounce such crimes and welcome their inclusion in the jurisdiction

of the Court. Cyprus had signed the Statute on 15 October 1998.

82. **Mr. Cunha** (Portugal) expressed his delegation's profound satisfaction at the establishment of the International Criminal Court, which supplied the missing link between the assertion of the rule of law and its effective enforcement. The adoption of the Statute was a historic step in that the participants in the Diplomatic Conference had overcome not only numerous complex legal problems but also fundamental political ones. It was a message to the world that justice had finally been perceived as an essential element of peace and that atrocities would no longer go unpunished.

83. The next step would be to draft the Rules of Procedure and Evidence and the Elements of Crimes. The Preparatory Commission should therefore be convened as soon as possible, and in any case no later than the early spring of 1999. It should receive adequate time, funding and secretariat services so that its mandate could be fulfilled no later than June 2000. Non-governmental organizations should be allowed to participate. Portugal, which had always been in favour of an independent and effective international criminal court, had signed the Statute. He hoped that by 2000 a large majority of Member States would have signed and ratified so that the Court would have unquestioned authority and the widest possible jurisdiction.

84. **Mr. Mirzaee Yengejeh** (Islamic Republic of Iran) noted the particular significance of the fact that the adoption of the Statue had taken place at the end of the United Nations Decade of International Law. An effective court aimed at deterring potential criminals would provide succeeding generations with the best hope for sparing the world from aggression and genocide.

85. The Statute, although the result of years of intensive negotiations, was still far from perfect, however. Not everyone was satisfied by some of its provisions and important points had been deferred for future consideration. It was, nonetheless, a complex text incorporating a number of issues currently falling within the jurisdiction of sovereign States and was thus currently under scrutiny by the relevant departments of his Government, which would decide on its next step in due course.

86. His delegation fully endorsed the resolutions adopted by the Conference, particularly resolution F on the establishment of a preparatory commission. The Commission faced a multifaceted responsibility: it had to prepare a number of instruments, make necessary arrangements for the commencement of the Court, finalize the draft Rules of Procedure and Evidence and Elements of Crimes and prepare proposals for a provision on aggression. His delegation hoped that the Commission would be able to address some of the concerns raised during the debate in the Sixth Committee so as to pave the way for the universal acceptance of the Court.

87. **Mr. Wenaweser** (Liechtenstein) said that his delegation, which had actively participated in the preparatory process leading up to the Diplomatic Conference and been one of the first signatories of the Statute, reiterated its satisfaction at the outcome of the Conference. The Statute constituted a very solid basis for the punishment of those responsible for the commission of the most serious crimes under international law, and, perhaps even more importantly, for the prevention of such crimes. His delegation particularly welcomed the fact that the Statute provided for a uniform regime of jurisdiction for all States parties, that the Prosecutor enjoyed *proprio motu* competence and that the Statute recognized rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and other forms of sexual violence as separate crimes under both articles 7 and 8. The section on crimes against humanity was well drafted and crimes committed at times of internal armed conflict had correctly been included. While not perfect, the Statute was very good and his delegation could therefore accept certain serious flaws in its text, particularly the provisions on preconditions to the exercise of jurisdiction and the articles on weaponry, which were too narrow.

88. It was of crucial importance that the momentum created at the Diplomatic Conference should be translated into determined action by the General Assembly. The outcome of the Conference should be acknowledged for the great success that it was, and the Preparatory Commission should be given the time and resources necessary to carry out its many difficult tasks.

89. His delegation would have preferred consensus on the Statute and it had taken note of the concerns expressed by some countries. Time and concerted efforts would be required to build awareness among those who had not felt able to vote in favour of the text. If the General Assembly resolution on the International Criminal Court could be adopted by consensus, it would be a step in the right direction.

90. **Mr. Mukongo Ngay** (Democratic Republic of the Congo) said that his was one of the few countries in the world which, owing to its geological configuration and huge natural resources, had from the dawn of history suffered appalling human rights violations. When, in 1960, it had declared its desire for sovereignty, it had fallen victim to conspiracies threatening its territorial integrity and the

legitimacy of its institutions. Violence still stalked its territory, in flagrant violation of the elementary rules of international law. The latest aggression – perpetrated by countries which had taken part in the Diplomatic Conference – had occurred a mere fortnight after the adoption of the Statute of the International Criminal Court. His delegation welcomed the fact that the Preparatory Commission would define the crime of aggression and the conditions under which the Court would exercise its jurisdiction.

91. It had been thought that the horrors of the Second World War would never recur, yet in the Great Lakes region terrible acts of extermination, deportation, rape of women and children and other atrocities were, even as he spoke, occurring on a vast scale in the areas occupied by those who had attacked his country. The invading forces had no scruples about opening fire on peaceful Congolese, thereby inaugurating a lawless society. The barbarity of the aggressors was such that in August 1998, for example, they had raped and disembowelled the pregnant wife of a village chief, whose body they had then exposed on the altar of the parish church. A number of nuns and over one hundred other people had been killed on the same occasion. A Ugandan journalist had bravely reported that soldiers of the Ugandan army regularly raped women and even girls under the age of 12. He would spare the Committee the details of the sabotage of industrial infrastructures or the incident – to take one example – in which a Congo Airlines Boeing 727 evacuating 41 passengers had been shot down on take-off at Kindu. If the International Criminal Court had been in operation, it might have prevented such crimes. Their perpetrators would have been punished and the introduction of the fascist, nazi and genocidal ideology could have been avoided.

92. As an innocent victim of the consequences of the genocide perpetrated in Rwanda by Rwandans against Rwandans, his country had declared itself in favour of an effective, independent, impartial and universal International Criminal Court. His delegation believed that such complex issues as the definition of crimes, complementarity, jurisdiction, the independence of the Prosecutor and relations with the United Nations had been satisfactorily regulated. Overall, it approved of the outcome of the Diplomatic Conference, although much remained to be done. It was regrettable that the Conference had been unable to reach a universally acceptable definition of terrorist or drug-related crimes. His delegation suggested that the Committee should establish working groups to consider the issues contained in paragraphs 5, 6 and 7 of resolution F of the Diplomatic Conference until such time as the Preparatory Commission met.

93. **Mr. Farrell** (Ireland), said that the absence of a permanent criminal court had been felt all too often. It was for that reason that the international community had invested much time and energy in preparing a statute to govern the establishment of such a court. That milestone had been attained and Ireland, which had signed the Statute on 7 October, firmly believed that the Preparatory Commission should be given the necessary time to allow it to complete its work. His delegation would participate fully in the work on preparing provisions governing the crime of aggression, in order to ensure that the Court would be in a position to exercise its jurisdiction over that crime. Valuable work had been done on such provisions both before and during the Diplomatic Conference and that work should be built upon.

94. **Mr. Kosirnik** (Observer for the International Committee of the Red Cross) said that by adopting the Statute of the International Criminal Court the great majority of States had clearly demonstrated their resolve to put an end to the impunity enjoyed by the perpetrators of heinous crimes and to deter the commission of further violations. The International Committee of the Red Cross trusted that in its capacity as promoter and guardian of international humanitarian law it had made some contribution to the achievement. The obligation to prosecute war criminals already existed but was often ignored. It was therefore to be hoped that the Court, which was intended to be complementary to national criminal jurisdiction, would encourage States to adopt the legislation necessary to implement international humanitarian law and bring violators before their own courts.

95. On the whole, the International Committee of the Red Cross was satisfied with the Statute. Although not all serious violations of international humanitarian law were covered, a large number were. A particularly welcome feature was that the Court could try crimes committed during non-international armed conflicts; it had been recognized that rape, torture, wilful killing, hostage-taking and attacks against the civilian population were war crimes in internal armed conflicts as well as in wars between States. The Statute also identified more precisely acts which amounted to war crimes, such as rape, sexual slavery, enforced prostitution, pregnancy and sterilization and the use of children under the age of 15 to participate in hostilities.

96. It was regrettable that the provisions relating to the use of certain weapons had been reduced to a minimum and did not apply to non-international armed conflicts. It was to be hoped that the use of weapons of mass destruction,

anti-personnel mines and blinding weapons would be added to the list of war crimes at the Review Conference. An even greater disappointment arose from article 124, which created a distinction between war crimes and other crimes. Under the article, a State might declare that it did not accept the Court's jurisdiction for a period of seven years when war crimes were alleged to have been committed by its nationals or on its territory. The fact that war crimes were subject to a different regime gave the impression that they were not as serious as other crimes within the jurisdiction of the Court. Yet international law already placed States under an obligation to prosecute war criminals, irrespective of their nationality or of the place where the crime was committed. The International Committee of the Red Cross therefore urged States not to make such a declaration and trusted that eventually the provision would be deleted.

97. Much remained to be done before the Court became fully operational. Above all, as many States as possible should ratify the Statute. The International Committee of the Red Cross undertook to promote such ratification and to contribute to the formulation of the elements of war crimes. Furthermore, since the Statute specified that the Court had jurisdiction only when the repression of war crimes was not carried out at the national level, the International Committee of the Red Cross intended to continue its efforts to assist States in adopting national legislation for the prosecution of war criminals. Ratification by a large number of States would be a recognition of the need to ensure that the victims of atrocities were not forgotten and that those who committed such atrocities did not go unpunished.

The meeting rose at 1 p.m.